DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 02-0471
Individual Adjusted Gross Income Tax
For the Years 1999, 2000, and 2001

NOTICE: Under 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Administrative Hearing Denial.

Authority: U.S. Const. amends. V, XIV; Ind. Const. art. 1, § 12; IC 6-8.1-5-1(a); IC 6-8.1-5-1(c); 45 IAC 15-5-2(c); Goldberg v. Kelly, 397 U.S. 254 (1970); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969).

Taxpayer challenged the Department's authority to schedule an administrative hearing on his behalf.

II. Applicability and Imposition of Indiana Individual Income Tax.

Authority: IC 6-2.1-1-16(a); IC 6-3-1-1 et seq.; 45 IAC 1.1-1-22; Commissioner v. Earl, 281 U.S. 111 (1930); Eisner v. Macomber, 252 U.S. 189 (1920); United States v. Connor, 898 F.2d 942 (3rd Cir. 1990); United States v. Koliboski, 732 F.2d 1328 (7th Cir. 1984); United States v. Romero, 640 F.2d 1014 (9th Cir. 1981); Connor v. United State, 303 F.Supp. 1187 (S.D. Tex. 1969); I.R.C. § 911; I.R.C. § 861; I.R.C. § 61(a); Treas. Reg. § 1.1-1(b).

Taxpayer argues that Indiana is without authority to impose a tax on his personal income.

STATEMENT OF FACTS

The Indiana Department of Revenue (Department) determined that taxpayer failed to pay income taxes for 1999, 2000, and 2001. Accordingly, the Department sent taxpayer notices of "Proposed Assessment" for those years. In response, taxpayer forwarded an "Administrative Notice of Debt Not Owed." The Department interpreted taxpayer's response as a tax protest. The taxpayer was contacted on October 10, 2002, for the purpose of scheduling a hearing in order to "permit the taxpayer an opportunity to present, facts, issues, and arguments in support of [his] position." The taxpayer declined to respond, and the Department again contacted taxpayer on December 2, 2002, asking him how he wished to proceed with his protest. Taxpayer declined to respond. On February 13, 2003, taxpayer was given notice that a hearing had been scheduled on his behalf for March 13, 2003. Taxpayer declined to participate but sent a letter indicating that he "denied" the

hearing because he did "not wish to waive [his] Unalienable Rights granted by God are [sic] Creator and protected by both the United States and Indiana Constitutions." Accordingly, this Letter of Findings was based upon the arguments set out in taxpayer's initial protest letter and his subsequent correspondence.

DISCUSSION

I. Administrative Hearing Denial.

Taxpayer argues that the administrative process – by which he was entitled to explain the basis for his protest – violates both his God-given rights and his rights under the Indiana and United States Constitutions.

Taxpayer was sent notices of "Proposed Assessment" pursuant to IC 6-8.1-5-1(a) which states that, "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department."

An individual taxpayer is entitled to challenge this "Proposed Assessment." IC 6-8.1-5-1(c) states that the taxpayer, after receiving the assessments, "has sixty (60) days from the date the notice is mailed to pay the assessment or to file a written protest." Having filed a protest, "the department shall: (1) set the hearing at the department's earliest convenient time." IC 6-8.1-5-1(c). If the taxpayer determines that a hearing is not necessary, "The taxpayer may, in lieu of a hearing, submit written objections to the assessment." 45 IAC 15-5-2(c).

Taxpayer maintains that the administrative procedures deny his fundamental rights under the Indiana and United States Constitutions. Taxpayer does not specify as much, but he apparently argues the Department's hearing procedures violate the Due Process Clause of both the federal and state constitutions. (U.S. Const. amends. V, XIV; Ind. Const. art. 1, § 12). Under the Due Process Clause, the essential guarantee is that of fairness. Any procedure must be fundamentally fair to the individual in the resolution of the factual and legal basis for government actions which will potentially deprive the citizen of life, liberty, or property. *See* Goldberg v. Kelly, 397 U.S. 254 (1970); Sniadach v. Family Finance Corp., 395 U.S. 337 (1969).

Taxpayer has provided no basis for substantiating his argument that the Department's administrative hearing procedure violates his constitutional due process rights. To the contrary, taxpayer was plainly provided a full, fair opportunity to address the issues raised within his protest. There is no indication the available procedure was not "fundamentally fair."

FINDING

Taxpayer's protest is denied.

II. Applicability and Imposition of Indiana Individual Income Tax.

Taxpayer states that he "took the trouble to actually read the tax laws and found that I am not liable for federal or state income taxes." Taxpayer suggests that the state income tax laws do not apply to the income received by ordinary citizens such as himself. Specifically, taxpayer states that, "I am not a government employee, I have not operated as a corporation, not have I contracted for the federal income tax, nor have I volunteered for the federal or state income tax."

Taxpayer provides numerous case citations in support of his contentions. For example, taxpayer cites to Eisner v. Macomber, 252 U.S. 189 (1920), a case in which the Court addressed the issue of whether the U.S. Const. amend. XVI permitted the government to tax a taxpayer's stock dividends resulting from a corporation's accumulated profits. The Court held that the stock dividend did not involve the realization of a taxable gain but that the corporation's accumulated profits were simply capitalized or retained as surplus. Id. at 211. In effect, the taxpayer in Eisner had not yet realized a gain severed from and independent of the corporations' assets. Id. at 211-12. In reaching that decision, the Court stated that income is the "gain derived from capital, from labor, or from both combined." Id. at 201.

In addition, taxpayer cites to Connor v. United State, 303 F.Supp. 1187 (S.D. Tex. 1969). In particular, taxpayer points to the court's statement that, "Whatever may constitute income, therefore, must have the essential feature of gain to the recipient." In Connor, the district court found that the plaintiffs' receipt of insurance proceeds, in the form of rental payments, did not constitute taxable income and that the IRS had erroneously included the rental payments in the plaintiffs' gross income. Id. at 1188.

Taxpayer's case citations do not get him where he wants to go. The Eisner case simply stands for the proposition that unrealized corporate income does not constitute taxable corporate income. Taxpayer relies on this case to support the argument that only corporate income is taxable income. However, nowhere in this opinion does the Court address the question of whether individual income is or is not taxable. In Eisner, the Court was asked the question of what did or did not constitute corporate income; the Court answered that question.

Taxpayer's reliance on Connor is equally unavailing, because the issue of whether ordinary wages were or were not taxable income was not before the district court. The Connor court simply determined that the plaintiffs did not realize taxable income when their insurance company reimbursed them for the cost of renting accommodations when plaintiffs' original home was destroyed in a fire.

Taxpayer places special reliance on the Supreme Court's ruling found in Commissioner v. Earl, 281 U.S. 111 (1930). The particular quotation cited by taxpayer states that, "It is to be noted that by the language of the Act it is not salaries, wages or compensation for personal services that are to be included in gross income. That which is to be included is gains, profits, and income derived from salaries, wages or compensation for personal services." The above language is not the Supreme Court's language authored by Justice Holmes nor is language taken from the Court's opinion. Taxpayer quotes the language of one of the appellate counsel which – as customary in earlier printed opinions – was set out before the court rendered its opinion. The language represents appellate counsel's argument; it does not represent and is not part of the Court's decision.

Taxpayer argues that the Internal Revenue Code – on which Indiana's own adjusted gross income tax is based – exempts ordinary income. Taxpayer errs. I.R.C. § 61(a) states as follows:

> Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:
>
> (1) Compensation for services, including fees, commissions, fringe benefits, and similar items;
> (2) Gross income derived from business;
> (3) Gains derived from dealings in property;
> (4) Interest;
> (5) Rents;
> (6) Royalties;
> (7) Dividends;
> (8) Alimony and separate maintenance payments;
> (9) Annuities;
> (10) Income from life insurance and endowment contracts;
> (11) Pensions.

As if the language in I.R.C § 61 was not sufficiently straightforward, Treas. Reg. § 1.1-1(b) provides that, "[i]n general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the code whether the income is received from sources within or without the United States."

Taxpayer relies on I.R.C. §§ 861, 911 for the contention that only nonresident aliens and foreign corporation are liable for income taxes based on the privilege of receiving income from sources within the United States. Taxpayer's reliance is entirely misbegotten. I.R.C. §§ 861, 911 define the sources of income – United States and non-United States source income – for such purposes as the prevention of double taxation of income that is subject to tax by more than one country. These sections neither specify whether income is taxable nor do they determine or define gross income. Taxpayer's conclusion, that only income received by foreign corporations and nonresident aliens, is clearly contrary to well established legal precedent and common sense. There is not a single court decision which has ever determined that the wages of an ordinary, resident citizen are not subject to income tax. "Let us now put [the question] to rest: WAGES ARE INCOME. Any reading of tax cases by would-be tax protesters now should preclude a claim of good-faith belief that wages – or salaries – are not taxable" United States v. Koliboski, 732 F.2d 1328, 1329 n. 1 (7th Cir. 1984) (Emphasis in original). "Compensation for labor or services, paid in the form of wages or salary, has been universally held by the courts of this republic to be income, subject to the income tax laws currently applicable. . . . [Taxpayer] seems to have been inspired by various tax protesting groups across the land who postulate weird and illogical theories of tax avoidance all to the detriment of the common weal [sic] and of themselves." United States v. Romero, 640 F.2d 1014, 1016 (9th Cir. 1981). "Every court which has ever considered the issue has unequivocally rejected the argument that wages are not income." United States v. Connor, 898 F.2d 942, 943 (3rd Cir. 1990).

Taxpayer argues that even if his income is subject to the federal income tax, nonetheless, that same income is not subject to Indiana's Gross Income tax. In support, taxpayer cites to IC 6-2.1-1-16 which states in its entirety:

> "Taxpayer" means any: (1) assignee; (2) receiver; (3) commissioner; (4) fiduciary; (5) trustee; (6) institution; (7) national bank; (8) bank; (9) consignee; (10) firm; (11) partnership; (12) joint venture; (13) pool; (14) syndicate; (15) bureau; (16) association; (17) cooperative association; (18) society; (19) club; (20) fraternity; (21) sorority; (22) lodge; (23) corporation; (24) municipal corporation; (25) political subdivision of the state of Indiana or the state of Indiana, to the extent engaged in private or proprietary activities or business; (26) trust; (27) limited liability company (other than a limited liability company that has a single member and is disregarded as an entity for federal income tax purposes); or (28) other group or combination acting as a unit.

Taxpayer correctly points out that a "private citizen" is not one of the enumerated categories of taxpayer as defined under IC 6-2.1-1-16. Indeed, 45 IAC 1.1-1-22 specifically states that, "[t]he term [taxpayer] does not include . . . an individual." Taxpayer can rest secure in the knowledge that he is not subject to Indiana Gross Income Tax. However, that determination is entirely pointless because no individual is *ever* subject to gross income tax. The state's gross income tax is imposed exclusively on business entities which are either resident or domiciliarys of Indiana or on non-resident business entities which nonetheless derive income from doing business within the state. IC 6-2.1-2.

Taxpayer's concern is – or should be – with the provisions of the individual adjusted gross income tax provisions as set out in IC 6-3-1-1 et seq. because that is the tax for which he was assessed.

Taxpayer's remaining misguided arguments are equally frivolous and the Department will not expend further resources in addressing them.

FINDING

Taxpayer's protest is denied.

DK/JM/MR – 032013